

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET- SUITE 200
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

August 29, 2006

Ref: 8ENF-UFO

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Larry D. Pounds, Secretary-Treasurer and Registered Agent
L & L Implement Company, Inc.
P.O. Box 307
Yuma, CO 80759

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Complaint with Notice of Opportunity
for Hearing

Dear Mr. Pounds:

The enclosed document is a Complaint with Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). Please have L & L Implement Company, Inc., (L & L Implement) carefully read the Complaint soon, since it describes L & L Implement's rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Complaint and, in case L & L Implement meets the criteria, an information sheet about the Small Business Regulatory Fairness Act.

L & L Implement is required to take action within 30 calendar days of your receipt of this Complaint to avoid the possibility of having a default judgment entered against L & L Implement that could impose the penalty amount proposed in the Complaint.

Whether or not L & L Implement requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. L & L Implement may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, L & L Implement should contact Chuck Figur,

Senior Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA's Complaint and the opportunity to provide written comments on the Complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the Complaint has a right to participate in the hearing.

If L & L Implement has technical questions relating to this matter, the person most knowledgeable on my staff is Carol L. Hutchings, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6485 or (303) 312-6485. For all legal questions, the person most knowledgeable on my staff is Chuck Figur at 1-800-227-8917 ext. 6915 or (303) 312-6915. Mrs. Hutchings and Mr. Figur can also be reached at the following addresses:

Carol L. Hutchings (Mail Code 8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 200
Denver, Colorado 80202-2466, or

Chuck Figur (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 200
Denver, Colorado 80202-2466

We urge L & L Implement's prompt attention to this matter.

Sincerely,

Eddie A. Sierra for/

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Complaint and Opportunity to Request Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. SDWA-08-2006-0055**

In the Matter of:)	
)	
L&L Implement Company, Incorporated)	COMPLAINT with
704 E. 8 th Avenue)	Notice of Opportunity
Yuma, Colorado 80759)	for Hearing
)	
Respondent.)	

**Proceeding under Section 1423(c) of the
Safe Drinking Water Act 42 U.S.C. § 300h-2(c)**

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act), 42 U.S.C. § 300h-2(c).
2. The Environmental Protection Agency (EPA) has promulgated regulations as required by the Act. They are set out in part 144 of title 40 of the Code of Federal Regulations (40 C.F.R. part 144). Violations of the Act, the regulations, or permits issued pursuant to the Act, constitute violations of the Act.
3. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. part 22 (Rules of Practice), govern this action. A copy of the Rules of Practice is enclosed.
4. The undersigned EPA official has been properly delegated the authority to issue this Complaint with Notice of Opportunity for Hearing (Complaint).
5. In this Complaint EPA alleges that L&L Implement Company, Incorporated (Respondent) has violated the Act at the facility described in paragraph 13 below, and proposes the assessment of a civil penalty, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

6. You (Respondent) have the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in this Complaint or

the appropriateness of the proposed penalty, or to present the grounds for any legal defense you may have.

7. To ensure you retain your right to a hearing on any aspect of this Complaint, you must file a written answer and one copy with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk
999 18th Street; Suite 200 (8RC)
Denver, Colorado 80202-2466

within thirty (30) calendar days of receiving this complaint (*see*, 40 C.F.R. § 22.15(a)). The answer must clearly admit, deny or explain each factual allegation of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN THIRTY (30) CALENDAR DAYS MAY WAIVE YOUR RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

QUICK RESOLUTION

8. You may resolve this proceeding at any time by paying the penalty amount proposed below. Such action to make payment need not contain any response to, or admission of, the allegations herein. Such action to make payment constitutes a waiver of your right to contest the allegations and to appeal the final order. Please see section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

9. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Chuck Figur, Senior Enforcement Attorney, at 1-800-227-8917, extension 6915; or 303-312-6915, or by mail at the address identified in paragraph 46 below. **Please note that calling Mr. Figur or requesting a settlement conference in writing does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this Complaint.

10. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. § 147.301, EPA administers the Underground Injection Control (UIC) program for Class V wells in the State of Colorado. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.
11. Respondent is a corporation incorporated in the State of Colorado and authorized and in good standing to do business in Colorado.
12. Respondent is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12).
13. Respondent owns and operates a farm machinery dealership and maintenance facility under the name L&L Implement of Wray, located at 36535 Highway 385, Wray, Co. 80758 (Facility).
14. Pursuant to 40 C.F.R. § 144.26, owners or operators of Class V injection wells are required to provide inventory information to EPA.
15. By letter dated July 9, 2001, EPA Region 8 requested that Respondent provide basic inventory information to EPA regarding the shallow injection well(s) Respondent operated at the Facility. A blank Shallow Well Injection Well Inventory Request form was enclosed with the letter.
16. In July 2001, EPA Region 8 received a completed Shallow Well Injection Well Inventory Request form from Respondent dated July 16, 2001 (Inventory Form).
17. The Inventory Form indicated that only sanitary waste is disposed of through a septic system, drainfield, or cesspool; and that oil, fuel, solvents, antifreeze, etc., are held in bulk storage and hauled offsite.
18. On February 14, 2003, EPA conducted a routine inventory verification inspection of the Facility (2003 inspection).
19. During the 2003 inspection, a Facility representative explained that three bathrooms on septic with a leachfield (Septic System) serve approximately 13-14 people. Floor drains in the wash bay and service shop flow into a settling tank. The settling tank is emptied monthly. The settling tank has an over-flow line to the Septic System.
20. During the 2003 inspection, a shop mechanic stated that the floor drain in the combine, battery shop and storage area discharges directly into the Septic System. The Facility representative did not know where this drain sent fluids.
21. The Septic System is a well (*see, e.g.*, 40 C.F.R. §§ 144.1(g)(1) and (2)).
22. Respondent's Septic System is a motor vehicle waste disposal well as described at 40 C.F.R. § 144.81(16), and, thus, a Class V Injection Well as defined at 40 C.F.R. §§ 144.6(e) and 146.5(e) (the Class V Well).

23. Fluids disposed of in the Class V Well may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (found at 40 C.F.R. part 141). These fluids also may include waste petroleum products containing contaminants such as heavy metals and volatile organic compounds, which pose risks to human health. *See*, 40 C.F.R. § 144.81(16).
24. EPA mailed a UIC Shallow Injection Well Program letter to Respondent dated May 17, 2004 (Permit or Close Letter). It was received by Respondent on May 18, 2004.
25. The Permit or Close Letter required Respondent to either: (a) submit a completed permit application for continued use of the Class V Well within thirty (30) days of receipt of the letter; or (b) submit a written plan detailing changes to, or closure of, the Class V Well, which actions were to be completed within sixty (60) days of receipt of the letter.
26. On or about June 14, 2004, Mr. Larry Pounds, Secretary and Treasurer of Respondent, contacted EPA to discuss the requirements of the Permit or Close Letter, and indicated that a letter with plans, a completion date, and photographs of certain activities would be sent to EPA. Mr. Pounds explained that Respondent wished to connect to the municipal sewer, but could not do so for some time; and as an interim measure Respondent would install a two thousand (2000) gallon holding tank to hold the liquids from the drain across the maintenance shop floor and the drain outside the maintenance shop doors (drains of concern). Mr. Pounds also indicated that a short extension of time might be needed to fully comply.
27. To date, no written plan has been received by EPA.
28. On July 19, 2005, an EPA representative performed a routine inspection of the Facility (2005 Inspection).
29. During the 2005 Inspection, the EPA representative found that the drains of concern were still open and active and that no holding tank of any size was visible.
30. Shortly after the 2005 Inspection, the EPA representative spoke with Mr. Pounds, who confirmed that no holding tank had been installed.
31. Shortly after the 2005 Inspection, the EPA representative spoke with Mr. James Wells, Superintendent of Wray water/wastewater, who confirmed that Respondent had not been hooked up to the municipal sewer.
32. On or about April 20, 2006, an EPA representative contacted Mr. Stan Holmes, Wray City Manager, by telephone, who stated that Respondent still was not authorized to hook up to the municipal sewer.
33. On or about April 24, 2006, an EPA representative contacted Mr. Pounds by telephone. Mr. Pounds stated that the drains of concern had still not been closed, and described some changes to management practices at the Facility.
34. By letter dated April 27, 2006, EPA notified Respondent that Respondent had failed to comply with the deadline for permanently closing the Class V Well at the Facility, and so was in violation of 40 C.F.R. § 144.12(c), and in violation of

- 40 C.F.R. § 144.12(a) for operating a Class V Well in a manner that may allow the movement of fluid containing contaminants in concentrations above the “MCLs” for primary drinking water standards or at levels, that could otherwise adversely affect the health of persons.
35. The April 27, 2006, letter required Respondent to: confirm in writing Respondent’s plans for alternative disposal and closure of the Class V Well within ten (10) days of receipt; permanently close the Class V Well within thirty (30) days of receipt; and provide documentation of such closure within thirty (30) days of completion of closure work.
 36. On May 16, 2006, EPA representatives performed a routine post-closure inspection at the Facility (2006 Inspection).
 37. During the 2006 inspection, the EPA representatives observed that: the two pipes running to the drain in the maintenance shop had been capped; the discharge line from the wash bay to the septic system had been plugged; and the drain in the storage area had been plugged. Each cap appeared to be permanent.
 38. A representative of Respondent stated that the capping and plugging work had been done on May 8, 2006.
 39. On May 17, 2006, EPA received an undated letter from Respondent with pictures documenting closure of the drains of concern and a commitment that these drains will remain closed until the City of Wray grants permission for Respondent to hook onto the city sewer system.
40. The Class V Well may be affecting the shallow alluvial aquifer from the floodplain and terraces of the North Fork of the Republican River and the underlying High Plains aquifer system (Aquifers). This system includes the Ogallala Formation Aquifer.

COUNT 1

41. Respondent is in violation of 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V disposal facility which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, where the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

COUNT 2

42. Respondent is in violation of 40 C.F.R. §§ 144.12(c)(1) and (2) and 40 C.F.R. § 144.8(B) for failure to close or retrofit the Class V Well in a manner that would keep contaminants from entering the USDW.

PROPOSED CIVIL PENALTY

43. The Act, as amended, authorizes the assessment of a civil penalty of up to \$32,500.00 per day for each violation, 42 U.S.C. § 300h-2(b).
44. The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require. 42 U.S.C. § 300h-2(c)(4)(B).
45. Based on consideration of the facts as known to EPA at this time (and set forth above) in light of the statutory factors, EPA calculates Respondent should pay total penalty of \$51,612.00 for the violations alleged herein.

Nature, Circumstances, Extent, and Gravity of Violations

Each of the violations is serious because of the threats to the quality and health of the Aquifers and the potential threats to health of persons posed by Respondent's noncompliance. Further, although the total economic benefit Respondent has enjoyed by not coming into compliance is nominal, Respondent took years to come into compliance, even after direct notice from EPA. While there can be little argument that Respondent has been responsible for maintaining compliance from the effective date of the program, for purposes of calculating a proposed penalty EPA is only considering Respondent's non-compliance from the closure date specified in the Permit or Close Letter (July 17, 2004) through the date Mr. Pounds stated that the drains of concern were addressed (May 8, 2006).

Economic Benefit

As noted above, for both counts Respondent enjoyed a nominal economic benefit by not expending money to come into compliance. The period for which EPA is calculating economic benefit also begins on July 17, 2004, and ends May 8, 2006.

Prior Compliance History

EPA Region 8 has not taken any prior formal enforcement actions against Respondent requiring compliance with the applicable UIC regulations.

Degree of Culpability

Respondent operates the Facility. Since at least May 2004, Respondent has had actual notice of the requirements and ample opportunity to spend the small amount it took to come into compliance. Respondent was also aware of the threats to the Aquifers during this time.

Good-Faith Efforts to Comply

Respondent has recently come into compliance. Particularly given the cost of coming into compliance, however, the amount of time it took to comply after formal notice from EPA mitigates against reducing the proposed penalty for this factor.

Ability to Pay

Because one source of independent financial documentation obtained by EPA shows sales of two million dollars in one year, EPA did not reduce the proposed penalty due to this factor. EPA will consider information Respondent may present regarding Respondent's ability to pay the proposed penalty.

Other Factors that Justice may Require

Because no information is available to EPA upon which an adjustment for this factor can be made, EPA has made no additional adjustments to the penalty.

46. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:
EPA - Region 8
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be mailed to the following address:

Charles Figur (8ENF-L)
Senior Enforcement Attorney
EPA Region 8
999 18th Street, Suite 200
Denver, Colorado 80202-2466.

47. The provisions of this complaint shall apply to and be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.
48. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3)(B).
49. This complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

Issued this 28TH day of August, 2006.

Eddie A. Sierra for/
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region 8
999 18th Street, Suite 200
Denver, CO 80202-2466

IN THE MATTER OF:
DOCKET NUMBER:

L&L IMPLEMENT COMPANY, INCORPORATED
DOCKET NO. SDWA-08-2006-0055

The undersigned hereby certifies that the original and one copy of the Administrative Complaint and Notice of Opportunity for Hearing, dated August 29, 2006 was hand-delivered to:

Region VIII Hearing Clerk
U. S. Environmental Protection Agency
999 18th Street
Denver, Colorado 80202-2466

And that a true copy of the same was sent by certified mail, return receipt requested to:

Larry D. Pounds
L & L Implement Company, Inc.
P. O. Box 307
Yuma, CO 80759

August 29, 2006

DATE

SIGNED

Judith M. McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENT PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON AUGUST 29, 2006.